

Addressing the Growing Universal Service Dilemma in Rural Areas of the Nation

The Problem:

High-quality telephone service in the most rural areas of the nation is being placed at risk due to large amounts of universal service support being made portable to competitive eligible telecommunications carriers (CETCs) that don't have the same service obligations as incumbent local exchange carriers (ILECs). The problem, which began with the manner in which the FCC constructed its portability rules, has been exacerbated by the recent *MAG Order*. The problem can be summarized in the following ways:

- The most support will be available to competitors in service areas of rural ILECs that have made the most investments to serve their customers. Thus, competitors will be drawn to these high-cost areas not because of market forces (inferior incumbent service, lack of investment, etc.) but rather because of the lure of large portable support. While the incumbent makes the commitment and investment to achieve the goals of the Communications Act of 1996, providing quality services (including advanced services) at reasonable rates, it may be creating a less stable environment for itself and its customers. Meanwhile, other areas where the incumbent may not have made adequate investments – and thus less portable support is available – will not be as attractive to competitors. This is counter-productive and bad public policy. It tends to create disincentives for an ILEC to make investments, knowing that the area it serves may not be able to support competition, yet by investing, it may draw a competitor because the competitor sees the funding as part of a lucrative business plan.
- ILECs are also required under the current universal service system to provide a higher level of service than are CETCs, especially wireless carriers. Such requirements include meeting state network reliability standards, providing equal access to interexchange carriers of the customer's choice, providing unlimited local usage, and offering access to enhanced emergency services (where available). These higher standards mean the ILEC provides customers with public health and safety benefits, as well as superior value of service. These requirements also create higher costs for the ILEC relative to CETCs. Any competitive carrier that does not have to meet these standards is providing an inferior service to its customers, yet still has access to the same amount of universal service support as the ILEC
- Not only are ILECs required to provide a higher level of service, there are no requirements to ensure that CETCs are held accountable to provide the supported services to the location that is subscribed. ILECs must obviously provide service to a customer's premise in order to receive support. However, it appears that a wireless CETC can claim support for a customer based on the customer's billing address, even if the customer cannot or does not use the wireless service at his premise. This situation is especially true and egregious in rural areas. Many rural customers subscribe to wireless service in addition to landline, because they want a mobile service, however, if the service cannot be provided at the

premise, and in many rural areas it cannot, then it is not truly universal service as understood and defined and should not be supported.

- The *MAG Order* exacerbates the situation by improperly converting ILEC costs directly related to access service into portable support. This order is particularly problematic in higher-cost areas west of the Mississippi River, where ILECs have unavoidably higher loop and transport costs. The *MAG Order* ultimately moves much of these costs into a new portable support mechanism, thus jeopardizing high-cost carriers even further. The *MAG Order* not only jeopardizes the service that these carriers provide to their customers, but it also creates a new implicit subsidy whereby the end user that ultimately pays universal service is subsidizing the IXC's costs of doing business.

The combination of these conditions creates a looming crisis to the provision of quality telephone service in the most rural areas of the nation. With this discussion paper we are attempting to shed light on this impending crisis and seek remedies to mitigate the impacts of current FCC policies. These policies provide unwarranted support to CETCs in the most-rural areas, and thus provide a non-economic incentive for competition in areas where the ILEC has made the most investment. The lack of a requirement on the CETC to provide the same level of service as the ILEC does not truly hold the CETC accountable for providing universal service. Providing universal service funding to such carriers has Section 254(k) implications.¹ The Joint Board should consider taking action in a number of areas.

The Solution:

Clarify the Elements of the Current Supported Services

The Joint Board, at the request of the FCC, is currently reviewing the list of nine "core" services that are eligible for federal universal service support (see FCC 01-J-01). The Joint Board has received comments and replies on this issue, and must now consider the record and recommend modifications to the FCC if warranted. Clarifying the elements of the currently supported services should take place concurrently with addressing the definition of supported services. This is an excellent opportunity for the Joint Board and the FCC to provide clarification, after examining the effects of the current definition in practice, which did not contain sufficient

¹ Section 254(k) states in part that the "Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services". Simply speaking, the assignment of costs to the universal services provided must not exceed the cost of actually providing the universal services over the facilities. Universal services cannot subsidize non-universal services. This is meant to ensure that the funds aren't used to fund competitive services. However, it can be said that if a carrier is receiving universal service funding, yet truly isn't satisfying the requirements of providing the "universal services", then this funding isn't being used for its intended purpose but being used to simply fund a competitive venture. If this is the case, then the receipt of funding by carriers that really aren't providing universal services as defined would also be in violation of Section 254(e).

clarification, and would give customers assurances about the level of universal service that they are being provided. Clarification of the elements that are part of the chosen definition for the supported services would provide benefits to consumers, while at the same time not increase the universal service support requirement.

The definition of services eligible for federal universal service support should be clarified in the following ways:

Single-party service or its functional equivalent. This definition should be clarified so that it is clear that this element should include a standard for availability of the network, or blocking probability, that must be met. In the *First Report and Order on Universal Service*, the FCC concurred with the Joint Board's conclusion that single-party service is essential to public health and safety in that it allows residential customers access to emergency services without delay. Access to that single party service is essential to public safety and health. Thus, unless a standard is adopted for availability, the FCC and Joint Board cannot be certain that emergency services can indeed be accessed without delay. Another clarification that should be included is that in the event of power failure, carriers receiving funding should have the emergency back-up capability to ensure that customers' universal service telephone service is uninterrupted following a power failure.

Local usage. It should be clarified that this definition requires that in order to receive universal service funding a carrier should include unlimited local usage in its offerings.

Access to emergency services. Public safety is a major issue. All carriers that receive universal service funding should be required to provide access to enhanced 911 (E911) service in areas where the local government has implemented an E911 system.

Access to interexchange services. In areas where the incumbent LEC that is receiving universal service funding is providing equal access, it should be clarified that the competitive carrier that is given ETC status should provide equal access also. This is particularly important in light of the MAG decision that will allow the CETCs to receive funding related to the provision of access services. Wireless carriers already have an undue advantage in the porting of universal service support, in that wireless service does not offer a true equivalent to a loop, because wireless customers do not have a dedicated channel to a switch. However, despite this lack of equivalency, wireless carriers receive high cost loop and long-term support funding, both of which are related to loop costs.

These clarifications of the definition of supported services as recommended above would not increase the universal service support requirement, as support amounts are based upon the costs of ILECs, which currently provide the supported services as defined above. Also, these clarifications would clearly benefit consumers since they then would have a choice of long distance providers and significant public health and safety assurances.

Increase Accountability of Providing Supported Services

In addition to clarifying the parameters of the supported services, another important aspect of universal service policy is to ensure that the supported services are being provided as defined. The FCC currently requires the states to certify that eligible telecommunications carriers (ETCs) are using universal service support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. However, there are no other verification procedures to guarantee that ETCs are held accountable for providing the supported services as defined. This aspect is every bit as, if not more important, than verifying that the support is being used for its intended purpose.

If ETCs are not providing the supported services as defined, they should not be receiving support. Section 254(e) requires that a carrier that receives universal service funding should use that support for the provision, maintenance and upgrading of facilities and the services for which the support is intended. Thus, universal service funds go to provide universal services. The most critical aspects that should be monitored are those universal services related to public health and safety. Monitoring conformance with the provision of single-party service or its functional equivalent as defined should be required. Such monitoring should include measuring availability of the network, or blocking probability. The availability of single-party service or its functional equivalent at the service address should also be verified. In some cases, a customer may subscribe to a wireless service for use at locations other than the customer's premises, or indeed such a service may not even function at the customer's premises. In these instances support should not be provided for such subscriptions.

The Joint Board should consider and recommend appropriate methods to monitor compliance with providing the supported services as defined. The consideration of this issue should include whether the responsibility for monitoring compliance should rest with the FCC, the states, or with both jurisdictions.

MAG Order Should Be Reconsidered For Highest-Cost LECs

Rate-of-return carriers with the highest costs, generally those providing service in the most sparsely populated areas, receive the highest per line amount of universal service funding. As opposed to a market-based rationale, this portable support may inappropriately provide the sole impetus for competitive entry in these areas. This can create non-economic competitive entry in these areas. The movement of carrier common line (CCL) cost recovery to a portable subsidy disproportionately affects ILECs in the least densely populated states west of the Mississippi River. Not only will costs that are currently recovered through CCL rates be moved to a portable subsidy, but transport costs contained in the Transport Interconnection Charge ("TIC") will also be shifted to CCL and then to portable support. The transport costs for carriers west of the Mississippi River are substantial, as the land area is greater and more sparsely populated than other areas of the country, thus leading to greater transport distances. An examination of the distribution of support among ILECs that receive long-term support (a

support mechanism to reduce CCL rates that is generally received by rural, high cost ILECs), indicates that ILECs among those in the highest ten percent receive \$73.41 in total universal service support per loop per month. Only eleven percent of such ILECs are east of the Mississippi River. Thus, the movement of CCL cost recovery into portable support will create a perverse incentive for competitors to enter the most sparsely populated areas, those least capable of supporting economic competition, in order to compete for the support. Most likely, however, this competition will be for the support funding, and not necessarily because the market can support it. While the FCC has currently ruled that interstate common line support (ICLS) will not be capped to maintain cost recovery, it has already received petitions for reconsideration asking that a cap be instituted. The risk associated with making network investments becomes much greater when facing the prospect of not recovering those investments. The combination of portability as currently implemented, the effect of the MAG plan and any threat of capping the ICLS creates an even steeper downward spiral for stability in these areas. This may cause rural ILECs to reduce their investments and quality of service.

In conjunction with the review of the universal service definition currently being conducted and in the midst of the FCC considering petitions for reconsideration of the MAG order, it would be appropriate for the Joint Board to request an examination of the impact of the *MAG Order* on high-cost ILECs, the majority of which are in the western half of the country. While the examination is undertaken, the Joint Board should also recommend that the ICLS phase under the *MAG Order* be delayed so that the large additional portable support would not take effect. Because the *MAG Order* creates another form of portable support, its interaction with current universal service support mechanisms and its potential effect on the provision of universal service should be examined carefully. Changes to the current universal service support system, the *MAG Order*, or both may be necessary to mitigate negative consequences, such as the discouragement of continued investment in the network, that would result from the interaction of the various support mechanisms without an understanding of the policy ramifications.

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